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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 WILLIAM D. WEBSTER,

10 Plaintiff,

11 v.

12 STACY BRONSON, *et al.*,

13 Defendants.

No. C07-5661FDB

ORDER

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15 This matter comes before the Court under Local General Rule 8(c). Plaintiff has
16 filed a “Motion to Recuse” in the above-captioned matter. Dkt. # 25. The Honorable Franklin
17 D. Burgess, United States District Judge, declined to recuse himself voluntarily and the matter
18 was referred to the Chief Judge. Dkt. # 34. Plaintiff’s motion is therefore ripe for review by the
19 undersigned.

20 Section 455 of title 28 of the United States Code governs the disqualification of
21 judges. It states in relevant part: “Any justice, judge, or magistrate judge of the United States
22 shall disqualify himself in any proceeding in which his impartiality might reasonably be
23 questioned.” Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

24 Whenever a party to any proceeding in a district court makes and files a timely and
25 sufficient affidavit that the judge before whom the matter is pending has a personal
26 bias or prejudice either against him or in favor of any adverse party, such judge
shall proceed no further therein, but another judge shall be assigned to hear such
proceeding. The affidavit shall state the facts and the reasons for the belief that
bias or prejudice exists.

ORDER

1 A judge must recuse himself if a reasonable person would believe that he is unable to be
2 impartial. Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir. 1993). A litigant may
3 not, however, use the recusal process to remove a judge based on adverse rulings in the pending
4 case: the alleged bias must result from an extrajudicial source. United States v. Studley, 783
5 F.2d 934, 939 (9th Cir. 1986).

6 Plaintiff filed his motion to recuse only after Judge Burgess dismissed his claims
7 and the matter was remanded from the Ninth Circuit for further proceedings. The risk that
8 plaintiff is using allegations of bias to overturn a decision of the court is therefore considerable.
9 Where the decision of the court is prompted solely by information that the judge received in the
10 context of the performance of his duties, the mere fact that a judge has issued an adverse ruling
11 almost never establishes bias or prejudice. See Larson v. Palmateer, 515 F.3d 1057, 1067 (9th
12 Cir. 2008) (“In the absence of any evidence of some extrajudicial source of bias or partiality,
13 neither adverse rulings nor impatient remarks are generally sufficient to overcome the
14 presumption of judicial integrity, even if those remarks are critical or disapproving of, or even
15 hostile to, counsel, the parties, or their cases.”) (internal quotation marks omitted).

16 In order to overcome the presumption of judicial integrity, plaintiff would have to
17 show that facts outside the record drove the court’s decision or that it was so irrational that it
18 must be the result of prejudice. Plaintiff alleges that Judge Burgess “is biased and prejudice[d]
19 against Caucasian males and in particular Caucasian males [who] are not members of the
20 Washington State Bar Association, American Bar Association and are pro se.” Motion at 2.
21 This allegation is based on nothing more than the fact that Judge Burgess ruled against plaintiff
22 in this matter. Assuming, for purposes of this motion, that the presiding judicial officer has ruled
23 against Caucasian males and/or pro se litigants in the past, there is no reason to suspect that such
24 rulings were based on anything other than the merits of the cases before him. Thus, plaintiff’s
25 motion to recuse is based solely on the fact that the Ninth Circuit reversed and remanded this
26 case for further proceedings. Judicial perfection is not required, nor can it be expected. While
Judge Burgess erred by not functionally analyzing defendant Bronson’s role as an investigator

1 and by failing to grant leave to amend the complaint *sua*
2 *sponte* , plaintiff properly and successfully raised his objections through an appeal. The errors
3 identified by the Ninth Circuit are not irrational and do not give rise to an inference of improper
4 motive or bias.

5 Having reviewed plaintiff's motion and the remainder of the record, the Court
6 finds that Judge Burgess' impartiality cannot reasonably be questioned. There being no
7 evidence of bias or prejudice, plaintiff's motion for recusal is DENIED.

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9 Dated this 23rd day of September, 2009.

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13 Robert S. Lasnik
14 Chief Judge, United States District Court
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